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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA-SOUTHERN DIVISION

MAX OWEN YOUNG, ) Case No. SA CV 15-00726-AS  
)  
Plaintiff, ) **MEMORANDUM OPINION AND**  
) **ORDER OF REMAND**  
v. )  
)  
CAROLYN W. COLVIN, )  
)  
Acting Commissioner of the )  
Social Security Administration, )  
)  
Defendant. )  
\_\_\_\_\_ )

Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED that this matter is remanded for further administrative action consistent with this Opinion.

**PROCEEDINGS**

On May 6, 2015, Plaintiff filed a Complaint seeking review of the denial of his application for Disability Insurance Benefits. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 9, 11). On September 11, 2015, Defendant filed an Answer along with the

1 Administrative Record ("AR"). (Docket Entry Nos. 15-16). The parties  
2 filed a Joint Position Statement ("Joint Stip.") on December 3, 2015,  
3 setting forth their respective positions regarding Plaintiff's claims.  
4 (Docket Entry No. 17).

5  
6 The Court has taken this matter under submission without oral  
7 argument. See C.D. Cal. L.R. 7-15; "Order Re: Procedures In Social  
8 Security Case," filed May 12, 2015 (Docket Entry No. 7).

9  
10 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**  
11

12 On January 23, 2013, Plaintiff, formerly employed as a operating  
13 engineer in the medical industry, an electrical maintenance mechanic in  
14 the food industry, a college adjunct professor, a field engineer in the  
15 oil industry and a programmable logic control technician in the food  
16 industry (see AR 45-47, 212-17), filed an application for Supplemental  
17 Disability Insurance Benefits, alleging an inability to work because of  
18 his disabling condition since November 25, 2012. (AR 172-73). On  
19 September 17, 2014, the Administrative Law Judge ("ALJ"), Helen E.  
20 Hesse, heard testimony from Plaintiff, medical expert Kenneth Layton,  
21 and vocational expert Ronald Hatakeyama. (See AR 41-73). On December  
22 5, 2014, the ALJ issued a decision denying Plaintiff's application.  
23 (See AR 17-33).

24  
25 After determining that Plaintiff had severe impairments --  
26 "degenerative disc disease of the cervical spine; degenerative disc  
27 disease of the lumbar spine; bilateral carpal tunnel syndrome; fecal  
28 incontinence/leakage; major depressive disorder; and anxiety disorder,  
not otherwise specified/post-traumatic stress disorder (PTSD)" (AR 19-

20)<sup>1</sup> --, the ALJ found that Plaintiff had the residual functional capacity ("RFC")<sup>2</sup> to perform light work<sup>3</sup> with the following limitations: sitting 6 hours out of an 8-hour day; standing or walking 6 hours out of an 8-hour day with normal breaks; must have a restroom within 50 yards of his work site; lifting and carrying 20 pounds occasionally and 10 pounds frequently; can perform frequent gross and fine manipulation bilaterally; precluded from jobs requiring hyper-vigilance; should not be in charge of safety operations of others; can have brief superficial contacts with co-workers, supervisors and the public; and precluded from intense interpersonal interactions such as taking complaints or encounters similar to those experienced by law enforcement or emergency personnel. (AR 24-32). After finding that Plaintiff was unable to perform any past relevant work (AR 35-32), the ALJ found that jobs existed in significant numbers in the national economy that Plaintiff could perform, and therefore found that Plaintiff was not disabled within the meaning of the Social Security Act. (AR 32-33).

Plaintiff requested that the Appeals Council review the ALJ's decision. (AR 12). The request was denied on March 10, 2015. (AR 1-

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<sup>1</sup> The ALJ found that Plaintiff's rib fractures, right wrist fracture, right arm regional complex pain syndrome, hypertension, obstructive sleep apnea-hypoapnea, and sinusitis were non-severe impairments. (See AR 19-20).

<sup>2</sup> A Residual Functional Capacity is what a claimant can still do despite existing exertional and nonexertional limitations. See 20 C.F.R. § 404.1545(a)(1).

<sup>3</sup> "Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls." 20 C.F.R. § 404.1567(b).

1 4). The ALJ's decision then became the final decision of the  
2 Commissioner, allowing this Court to review the decision. See 42 U.S.C.  
3 §§ 405(g), 1383(c).

#### 5 **PLAINTIFF'S CONTENTIONS**

6  
7 Plaintiff alleges that the ALJ erred in failing to: (1) properly  
8 reject the mental function limitations assessed by Plaintiff's treating  
9 psychologist (Dr. Messinides), examining psychologist (Dr. Cleary), and  
10 examining psychiatrist (Dr. Aguilar); (2) properly reject the physical  
11 function limitations assessed by Plaintiff's examining psychiatrist, Dr.  
12 Cragg; and (3) adequately consider the disability determination made by  
13 the Department of Veteran's Affairs. (See Joint Stip. at 6-21, 26-29,  
14 31-32).

#### 15 **DISCUSSION**

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18 After consideration of the record as a whole, the Court finds that  
19 Plaintiff's third claim of error warrants a remand for further  
20 consideration. Since the Court is remanding the matter based in  
21 Plaintiff's third claim of error, the Court will not address Plaintiff's  
22 first and second claims of error.

#### 23 24 **A. The ALJ Failed to Adequately Consider the Disability Determination** 25 **by the Department of Veteran's Affairs**

26  
27 Plaintiff asserts that the ALJ erred in failing to give "great  
28 weight" to the disability determination of the Department of Veteran's

1 Affairs ("VA"). (See Joint Stip. at 6, 31-32). Defendant asserts that  
2 the ALJ properly gave little weight to the VA's disability  
3 determination. (See Joint Stip. at 32-34).  
4

5 On November 5, 2012 (approximately three weeks prior to the alleged  
6 onset date of disability), Plaintiff received, inter alia, a 100 percent  
7 disability evaluation for his post-traumatic stress disorder with major  
8 depressive disorder and panic disorder with agoraphobia and alcohol  
9 abuse, episodic, under the rubric of the VA. (See AR 162-63).  
10

11 The ALJ addressed the VA's disability determination as follows:  
12

13 The file also contains a rating decision from the  
14 Department of Veterans Affairs (VA) dated November 5, 2012.  
15 Based on the information received by the VA prior to the date  
16 of this decision letter, the claimant was given a 100 percent  
17 disability evaluation for his impairments, specifically his  
18 PTSD (Exhibit 1D/3). The VA disability rating system, while  
19 a federal disability program, operates under different  
20 regulations, rules and procedures. A primary consideration is  
21 the connection between the impairments alleged and the  
22 individuals' past military service. In addition, percentages  
23 are given to show the level of disability for single  
24 impairments as well as combinations of impairments. The  
25 Social Security disability system operates under different  
26 regulations, rules and procedures. It also does not give  
27 severity percentages, but it examines the whole individual for  
28 all impairments no matter their source to determine an

1 individuals' maximum residual functional capacity. No such  
2 effort or explanation is made in the VA decision letter.  
3 Furthermore, the VA decision letter includes a reference to a  
4 GAF score of 30 (see Exhibit 1D/3). That GAF score is not  
5 repeated in the file as of the alleged onset date.  
6 Additionally, that score represents symptoms that would  
7 require immediate action to institutionalize the claimant  
8 because of mental impairments so severe he could not function  
9 appropriately in society, which is what that score represents.  
10 As such, the score cited and the lack of a psychiatric  
11 hospitalization are not medically consistent. Therefore, the  
12 undersigned notes the presence of the VA decision letter, but  
13 finds the conclusions reached and the rationale given  
14 unpersuasive and not relevant to the current disability case  
15 under a completely different set of regulations, rules and  
16 procedures.

17  
18 (AR 29-30).  
19

20 "[I]n an [Social Security Disability] case an ALJ must ordinarily  
21 give great weight to a VA determination of disability." McCartey v.  
22 Massanari, 298 F.3d 1072, 1076 (9th Cir. 2002) ("Both programs serve the  
23 same governmental purpose--providing benefits to those unable to work  
24 because of a serious disability. Both programs evaluate a claimant's  
25 ability to perform full-time work in the national economy on a sustained  
26 and continuing basis; both focus on analyzing a claimant's functional  
27 limitations; and both require claimants to present extensive medical  
28 documentation in support of their claims. . . . Both programs have a

1 detailed regulatory scheme that promotes consistency in adjudication of  
2 claims. Both are administered by the federal government, and they share  
3 a common incentive to weed out meritless claims. The VA criteria for  
4 evaluating disability and translate easily into SSA's disability  
5 framework. Because the VA and SSA criteria for determining disability  
6 are not identical, however, the ALJ may give less weight to a VA  
7 disability rating if he gives persuasive, specific, valid reasons for  
8 doing so that are supported by the record." Id. (Internal citations  
9 omitted).

10  
11 Here, the ALJ's reasons for giving the VA's disability  
12 determination little weight, specifically, (1) the criteria for  
13 determining disability under the VA program and the Social Security Act  
14 are different, (2) the percentage of disability is not indicative of any  
15 specific limitations on Plaintiff's abilities to perform work-related  
16 activity, and (3) the VA, in the section discussing its disability  
17 determination, assigned Plaintiff a Global Assessment of Functioning  
18 ("GAF") score of 30,<sup>4</sup> which is a GAF score not found in any records as  
19 of the November 25, 2012 onset date of disability, and a GAF score that  
20 would have required psychiatric hospitalization (but there are no  
21 records showing such hospitalization), were improper.

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25 <sup>4</sup> A GAF score of 21 to 30 indicates "[b]ehavior . . .  
26 considerably influenced by delusions or hallucination OR serious  
27 impairment in communication or judgment (e.g., sometimes incoherent,  
28 acts grossly inappropriately, suicidal preoccupation) OR inability to  
function in almost all areas (e.g., stays in bed all day; no job, home,  
or friends)." See Diagnostic and Statistical Manual of Mental  
Disorders, Fourth Edition, Text Revision ("DSM-IV-TR"), 34 (2000).

1 As set forth above, the ALJ was required to "give great weight to  
2 a VA determination of disability," Massanari, 298 F.3d at 1076, or to  
3 provide persuasive, specific, and valid reasons for giving less weight  
4 to a VA determination of disability. Id. See Allen v. Astrue, 2012 WL  
5 234629, \*4 (C.D. Cal. Jan. 23, 2012)("The ALJ stated simply she was not  
6 bound by [the VA's] disability finding. This is not a persuasive,  
7 specific and valid reason for rejecting the VA's finding of  
8 disability."). The ALJ's rejection of the VA's disability determination  
9 based on her finding that the criteria for determining disability under  
10 the VA program and the Social Security Act are different and that the  
11 percentage of disability is not indicative of any specific limitations  
12 on Plaintiff's abilities to perform work-related activity are not  
13 persuasive, specific and valid reasons for rejecting the VA's  
14 determination. The ALJ also stated that the VA's finding that Plaintiff  
15 had a GAF score to 30 was not consistent with the medical records as of  
16 the onset date of disability but failed to explain why the VA's finding  
17 was inconsistent with the record before the VA or why the GAF score was  
18 not relevant to a determination of disability or cite to any authority  
19 supporting her assertion that a GAF score of 30 requires  
20 hospitalization. See also Marulis v. Colvin, 2015 WL 1021117, \*16 (E.D.  
21 March 9, 2015)("GAF scores are unreliable indicators of a claimant's  
22 ability to perform sustained work, as they are 'merely a snapshot in  
23 time' that may or may not be supported by the overall medical  
24 record.")(citation ommitted); Deck v. Colvin, 2014 WL 7388792, \*1 (9th  
25 Cir.)(" . . . [T]he [GAF] score is used for treatment purposes and not  
26 for rating a person's ability to work."); McFarland v. Astrue, 288  
27 Fed.Appx. 357, 359 (9th Cir. 2008)("The Commissioner has determined the  
28 GAF scale 'does not have a direct correlation to the severity



1 requirements in [the Social Security Administration's mental disorders  
2 listings.'")(citation omitted).

3  
4 Therefore, the ALJ failed to provide a persuasive, specific and  
5 valid reason for giving little weight to the VA's disability  
6 determination.

7  
8 **D. Remand Is Warranted**

9  
10 The decision whether to remand for further proceedings or order an  
11 immediate award of benefits is within the district court's discretion.  
12 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no  
13 useful purpose would be served by further administrative proceedings, or  
14 where the record has been fully developed, it is appropriate to exercise  
15 this discretion to direct an immediate award of benefits. Id. at 1179  
16 ("[T]he decision of whether to remand for further proceedings turns upon  
17 the likely utility of such proceedings."). However, where, as here, the  
18 circumstances of the case suggest that further administrative review  
19 could remedy the Commissioner's errors, remand is appropriate. McLeod  
20 v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011); Harman v. Apfel, supra,  
21 211 F.3d at 1179-81.

22  
23 Since the ALJ failed to provide a proper reason for giving little  
24 weight to the Department of Veteran's Affairs' disability determination,  
25 remand is appropriate. Because outstanding issues must be resolved  
26 before a determination of disability can be made, and "when the record  
27 as a whole creates serious doubt as to whether the [Plaintiff] is, in  
28 fact, disabled within the meaning of Social Security Act," further

1 administrative proceedings would serve a useful purpose and remedy  
2 defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th Cir.  
3 2014)(citations omitted).<sup>5</sup>

4  
5 **ORDER**

6  
7 For the foregoing reasons, the decision of the Commissioner is  
8 reversed, and the matter is remanded for further proceedings pursuant to  
9 Sentence 4 of 42 U.S.C. § 405(g). On remand, the ALJ should make sure  
10 the record is fully developed with respect to all records relevant to  
11 the VA's disability determination

12  
13 LET JUDGMENT BE ENTERED ACCORDINGLY.

14  
15 DATED: March 9, 2016

16  
17 \_\_\_\_\_/s/  
18 ALKA SAGAR  
19 UNITED STATES MAGISTRATE JUDGE  
20

21 \_\_\_\_\_  
22 <sup>5</sup> The Court has not reached any other issue raised by Plaintiff  
23 except insofar as to determine that reversal with a directive for the  
24 immediate payment of benefits would not be appropriate at this time.  
25 "[E]valuation of the record as a whole creates serious doubt that  
26 Plaintiff is in fact disabled." See Garrison v. Colvin, 759 F.3d 995,  
27 1021 (2014). Accordingly, the Court declines to rule on Plaintiff's  
28 claims that the ALJ failed to properly reject the mental function  
limitations assessed by her treating psychologist, Dr. Messinides,  
examining psychologist, Dr. Cleary, and examining psychiatrist, Dr.  
Aguilar (see Joint Stip. at 6-21), and that the ALJ failed to properly  
reject the physical function limitations assessed by Plaintiff's  
examining psychiatrist, Dr. Cragg (see Joint Stip. at 6, 26-29).  
Because this matter is being remanded for further consideration, these  
issues should also be considered on remand.